IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2421 OF 2006

Seema Foreign Liquors- Partners
1. Shri Premsinh Baldevsinh
Pardeshi & Anr. ...Petitioners

V/s.
M/s.Anandram Traders & Anr. ...Respondents

Mr.Ashutosh M. Kulkarni for Petitioners.
Mr.Amit Borkar for Respondent No.1.
Mr. Y.S. Shinde APP for State/Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : 8th AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioners, learned counsel for Respondent No.1 and learned APP for the State/Respondent No.2.

2. Petitioners are challenging the order of issuance of process by Judicial Magistrate, First Class, Kolhapur by an order dated 11/10/2005. It was submitted by the learned counsel for the Petitioners that the Petitioner No.2 was not a partner of the said Firm. In support of his submission, he relied on the extract from the Registrar of Firms which mentions the names of the partners of M/s.Seema Foreign

Liquor having principal place of business at 1539, C Ward, Laxmipuri, Kolhapur. He also relied on the letter issued by Sub-Registrar of Firms dated 25/01/2006 in which it is mentioned that M/s.Seema Foreign Liquors having their principal place of business at 1237 C Laxmipuri, Kolhapur has not been registered with the Registrar of Firms. However, one M/s.Seema Foreign Liquor having their principal place of business at 1539, C Ward, Laxmipuri, Kolhapur is registered with Registrar of Firms and there is no change in the partners since 1972. It is submitted that learned Magistrate has ignored these documents in evidence. It is submitted that this evidence conclusively proves that the Petitioner No.2 is not a partner in the said Firm and process could not have been issued against him. This submissions made by the learned counsel for the Petitioners cannot be accepted.

3. In the complaint, address of the Firm is given as 1237, C Laxmipuri, Kolhapur, whereas extract from the Registrar of Firms on which reliance is placed by the learned counsel for the Petitioners, mentions the address as principle place of business at 1539, C Ward, Laxmipuri, Kolhapur. Therefore, even Sub-Registrar of Firms has stated that Firm having its address at 1237 C Laxmipuri, Kolhapur is

not registered with Registrar of Firms. There is no bar under Cr.P.C. for prosecuting partners of un-registered Firm. Learned Magistrate, therefore, has taken notice in para 10 of the said order and rejected the submissions made by the learned counsel for the Petitioners. Learned Magistrate has also observed that CW 2 Mr.Vinod Gaikwad and CW 3 Mr. Pandharpurkar have also corroborated the contention of the complainant that the Petitioners Mr. Premsinh Pardeshi and Mr.Naresh Ramesh Gidwani are the partners of the Firm "Seema Foreign Liquors".

4. Next submission made by the learned Counsel for the Petitioner is that no opportunity was given to the Petitioners to cross examine witness who was examined by the complainant. This submission also cannot be accepted. In the present case, initially process was issued against both the partners of the Firm. Against said order revision application was filed. Said application was partly allowed and direction was given by the Sessions Court to the Magistrate to permit both the parties to lead evidence and thereafter, decide question of issuance of process. Accused, at the stage of

permission of the issuance of process, obviously has no locaus standi to cross examine the witness examined by the prosecution. Submissions made by the learned counsel for the Petitioners, therefore, cannot be accepted. Writ Petition is dismissed accordingly. Magistrate to decide the case as expeditiously as possible.

V.M. KANADE, J.